

## Department of State

## § 128.3

presentation with an oral presentation. However, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the written presentation.

(g) Voluntary disclosures should be sent to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls. Exporters should consult the Directorate of Defense Trade Controls Web site at <http://www.pmdtc.org> for the appropriate street address.

[58 FR 39316, July 22, 1993, as amended at 70 FR 34655, June 15, 2005]

### PART 128—ADMINISTRATIVE PROCEDURES

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AUTHORITY: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

SOURCE: 58 FR 39320, July 22, 1993, unless otherwise noted.

#### § 128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. It also authorizes

the Secretary of State to revoke, suspend or amend licenses or other written approvals whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

[61 FR 48831, Sept. 17, 1996]

#### § 128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State or of the Department of Commerce, as provided in 15 CFR 788.2. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 127.7, 127.8, and 128.3 through 128.16 of this subchapter.

[61 FR 48831, Sept. 17, 1996]

#### § 128.3 Institution of Administrative Proceedings.

(a) *Charging letters.* The Director, Office of Defense Trade Controls, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with § 127.7 or § 127.10 of this subchapter respectively. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice to the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer.